

REMARKS/ARGUMENTS

In response to the Office Action dated June 6, 2003, Applicants respectfully request reconsideration based on the above claim amendment and the following remarks. Applicants respectfully submit that the claims as presented are in condition for allowance.

Claims 1-21 are pending in this application. Claims 1, 6-16, 18, 19, and 21 stand rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over U.S. Patent No. 5,761,602 (“Wagner”). Claims 2-5, 17, and 20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wagner in view of U.S. Patent No. 6,195,692 (“Hsu”).

Interview Summary

Applicants’ attorney Kenneth R. Eiferman and the Examiner discussed the claims of the present application in relation to Wagner in a telephonic interview on July 29, 2003. The following is Applicants’ understanding of the substance of the interview:

1. Mr. Eiferman requested that the Examiner specifically state where the claimed “transmission request” (line 3 of claim 1) was taught or suggested by Wagner. The Examiner asserted that, although the transmission request was not specifically mentioned in Wagner, the transmission request was an inherent feature of an Internet system. Mr. Eiferman did not concede that an a transmission request was an inherent feature of an Internet system, as data such as, for example, electronic “spam” mail may often be transmitted over the Internet without being preceded by a request.

Rejections Under 35 U.S.C. § 102(b)

Claims 1, 6-16, 18, 19, and 21 stand rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over Wagner. Applicants respectfully disagree.

The Claimed Invention

The present application discloses systems and methods for content transmission network selection. More specifically there is disclosed:

“[Transmission] requests are transmitted over a broadband network, a back channel to a broadcast network, or both to a

transmission network selector. The transmission network selector determines whether the content will be transmitted over a broadcast network or a broadband network. This determination is based on the information provided with the transmission request, information about the content itself, and information about the broadcast and broadband networks." (Application, Summary of the invention).

In accordance with the disclosure, claim 1, which is representative of the other independent claims, is directed to a "method for content transmission network selection." The claimed method comprises the following steps:

"identifying content to be transmitted based on at least one transmission request;

determining whether to transmit the content using a broadcast network or a broadband network based upon characteristics of the transmission request; and

transmitting the content on one of the broadcast network or broadband network."

In order for a reference to anticipate this claim, the reference must teach the combination of all of the claimed elements, including those emphasized. Applicants' undersigned attorney respectfully submits that the cited reference does not.

The Cited Reference Does Not Teach the Claimed Invention

Wagner discloses a hybrid multi-channel data transmission system utilizing a broadcast medium. The system includes:

"1) a distributor at the broadcast point which receives data and then transmits this data on the uni-directional broadcast channels, 2) a plurality of clients which receive this data and periodically connect to 3) a router which receives the requests and acknowledgments from the clients, and services these requests through its connections to remote systems such as networks, host computers, and the distributor (Wagner, Summary of the Invention)."

Thus, Wagner teaches a routing system in which content is received from an outside source and transmitted to a client over either a uni-directional broadcast channel or another bi-directional channel.

Importantly, and in contrast to the present invention, Wagner does not teach, “determining whether to transmit the content using a broadcast network or a broadband network **based upon characteristics of [a] transmission request**”, as recited in independent claims 1, 16, and 19 of the present application. Although, Wagner mentions that a client may request content, *Wagner does not teach or suggest that such a request is sent to the distributor, which determines which network over which to transmit the content* (Fig. 1, element 5; Col. 8, lines 20-26). Because the distributor does not receive the request, the distributor cannot possibly use the request to make the determination. Rather, the distributor makes the determination based on characteristics of the content and characteristics of the networks (Col. 7, lines 53-64).

Specifically, the Examiner asserts that the priority or type of the data and the average client waiting time disclosed by Wagner are characteristics of a transmission request. Applicants respectfully submit, however, that the priority or type of the data are characteristics of the data itself. The priority of the data is a characteristic of the data which may be assigned to the data by a *sender* of the data so that the data may be efficiently transmitted to and processed by the recipient.

Furthermore, the Examiner asserts that the average client waiting time is a characteristic of a transmission request. Applicants respectfully disagree. Client waiting time is the time which a client must wait to receive content that is transmitted over a network. Client waiting time is, therefore, a characteristic of the network over which the data is to be transmitted.

Additionally, regarding dependent claim 8, Applicants respectfully submit that Wagner does not teach a request including the geographic location to which the content is to be transmitted, the time at which the content is requested to be viewed, or a dollar amount the viewer is willing to pay for the content. The Examiner analogizes the client waiting time to the time at which the content is requested to be viewed. Applicants respectfully disagree with this analogy. A client may often wish to view content at a later time than the client waiting time. In such cases, the content may be delivered to the client at the later requested viewing time, thereby preserving current available bandwidth on the network.

Applicants respectfully submit that dependent claims 6-13, 18, and 21 are patentable at least by reason of their dependency. Accordingly, reconsideration and withdrawal of the 35 U.S.C. § 102(b) rejections are respectfully requested.

Rejections Under 35 U.S.C. § 103(a)

Claims 2-5, 17, and 20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wagner in view of Hsu. Applicants respectfully disagree.

Hsu discloses, “an internet on-demand system for television presenting internet content and traditional television programming as part of a single coherent interface (Hsu, Summary of the Invention).” Importantly, Hsu does not cure the deficiencies of Wagner. Hsu does not teach, “determining whether to transmit the content using a broadcast network or a broadband network **based upon characteristics of [a] transmission request**”, as recited in independent claims 1, 16, and 19 of the present application. Although Hsu mentions that a client may request content, Hsu does not teach or suggest that such a request is evaluated for purposes of determining over which channel to transmit the content.

Applicants respectfully submit that dependent claims 2-5, 17, and 20 are patentable at least by reason of their dependency. Accordingly, reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejections are respectfully requested.

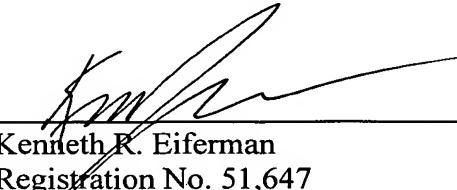
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CONCLUSION

In view of the above remarks, Applicant respectfully submits that the present application is in condition for allowance. Reconsideration of the application and an early Notice of Allowance are respectfully requested.

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